

Senate Bill 406

By: Senators McKoon of the 29th and Hill of the 6th

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia
2 Annotated, relating to general authority, duties, and procedures relative to the Department
3 of Administrative Services, so as to change certain provisions relating to contracting with
4 companies having business operations in Sudan, scrutinized companies, and certifications;
5 to make certain of such provisions applicable to contracting with companies having business
6 operations in Iran; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated,
10 relating to general authority, duties, and procedures relative to the Department of
11 Administrative Services, is amended by revising Code Section 50-5-84, relating to
12 contracting with companies having business operations in Sudan, scrutinized companies, and
13 certifications, as follows:

14 "50-5-84.

15 (a) As used in this Code section, the term:

16 (1) 'Business operations' means engaging in commerce in any form in Sudan or Iran,
17 including, but not limited to, acquiring, developing, maintaining, owning, selling,
18 possessing, leasing, or operating equipment, facilities, personnel, products, services,
19 personal property, real property, or any other apparatus of business or commerce.

20 (2) 'Company' means any sole proprietorship, organization, association, corporation,
21 partnership, joint venture, limited partnership, limited liability partnership, limited
22 liability company, or other entity or business association, including all wholly owned
23 subsidiaries, majority owned subsidiaries, parent companies, or affiliates of such entities
24 or business associations, that exists for the purpose of making profit.

25 (3) 'Government of Sudan' means the government in Khartoum, Sudan, that is led by the
26 National Congress Party, formerly known as the National Islamic Front, or any successor

27 government formed on or after October 13, 2006, including the coalition National Unity
28 Government agreed upon in the Comprehensive Peace Agreement for Sudan, and does
29 not include the regional government of southern Sudan.

30 (3.1) 'Government of Iran' includes any agency or instrumentality of such government.

31 (4) 'Marginalized populations of Sudan' include, but are not limited to, the portion of the
32 population in the Darfur region that has been genocidally victimized; the portion of the
33 population of southern Sudan victimized by Sudan's north-south civil war; the Beja,
34 Rashidiya, and other similarly underserved groups of eastern Sudan; the Nubian and other
35 similarly underserved groups in Sudan's Abyei, southern Blue Nile, and Nuba Mountain
36 regions; and the Amri, Hamadab, Manasir, and other similarly underserved groups of
37 northern Sudan.

38 (5) 'Military equipment' means weapons, arms, military supplies, and equipment that
39 may readily be used for military purposes, including, but not limited to, radar systems,
40 military-grade transport vehicles, or supplies or services sold or provided directly or
41 indirectly to any force actively participating in armed conflict in Sudan.

42 (6) 'Mineral-extraction activities' include the exploring, extracting, processing,
43 transporting, or wholesale selling or trading of elemental minerals or associated metal
44 alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron
45 ore, silver, tungsten, uranium, and zinc.

46 (7)(A) 'Oil related activities' include:

47 (i) Exporting, extracting, producing, refining, processing, exploring for, transporting,
48 selling, or trading oil; and

49 (ii) Constructing, maintaining, or operating a pipeline, refinery, or other oil field
50 infrastructure.

51 (B) A company shall not be considered to be involved in oil related activities if:

52 (i) The company is involved in the retail sale of gasoline or related consumer
53 products in Sudan but is not involved in any other activity described in subparagraph
54 (A) of this paragraph; or

55 (ii) The company is involved in leasing or owns rights to an oil block in Sudan but
56 is not involved in any other activity described in subparagraph (A) of this paragraph.

57 (8) 'Power-production activities' means any business operations that involve a project
58 commissioned by the National Electricity Corporation of Sudan or other similar entity of
59 the government of Sudan or Iran, as applicable, whose purpose is to facilitate power
60 generation and delivery, including establishing power-generating plants or hydroelectric
61 dams, selling or installing components for the project, or providing service contracts
62 related to the installation or maintenance of the project.

63 (9) 'Scrutinized company' means a company that is conducting business operations in
 64 Sudan ~~or Iran~~ that is involved in power production activities, mineral extraction activities,
 65 ~~oil-related~~ oil related activities, or the production of military equipment, but excludes a
 66 company that can demonstrate any of the following:

67 (A) Its business operations are conducted under contract directly and exclusively with
 68 the regional government of southern Sudan;

69 (B) Its business operations are conducted under a license from the Office of Foreign
 70 Assets Control or are expressly exempted under federal law from the requirement to be
 71 conducted under such a license;

72 (C) Its business operations consist of providing goods or services to marginalized
 73 populations of Sudan;

74 (D) Its business operations exclusively consist of providing goods or services to an
 75 internationally recognized peacekeeping force or humanitarian organization;

76 (E) Its business operations consist of providing goods or services that are used only to
 77 promote health or education;

78 (F) Its business operations with the Government of Sudan will be voluntarily
 79 suspended for the entire duration of the contract for goods or services for which they
 80 have bid on, or submitted a proposal for, a contract with a state agency; or

81 (G) It has adopted, publicized, and is implementing a formal plan to cease business
 82 operations within one year and to refrain from conducting any new business operations.

83 (b)(1) A scrutinized company shall be ineligible to, and shall not, bid on or submit a
 84 proposal for a contract with a state agency for goods or services.

85 (2) Notwithstanding paragraph (1) of this subsection, the Department of Administrative
 86 Services may permit a scrutinized company, on a case-by-case basis, to bid on or submit
 87 a proposal for a contract with a state agency for goods or services if it is in the best
 88 interests of the state to permit the scrutinized company to bid on or submit a proposal for
 89 one or more contracts with a state agency for goods or services.

90 (3) In making this determination, the Department of Administrative Services may utilize
 91 the following resources:

92 (A) Verification by an independent third party or nonprofit organization that a
 93 company is either:

94 (i) Undertaking significant humanitarian efforts in conjunction with an international
 95 organization, the Government of Sudan, the regional government of southern Sudan,
 96 ~~or~~ a nonprofit organization to benefit one or more marginalized populations of Sudan,
 97 or the Government of Iran. The party or organization providing the verification or an
 98 independent third party shall evaluate and certify that the significant humanitarian
 99 efforts are substantial in relation to the company's Sudan business operations; or

- 100 (ii) Through engagement with the Government of Sudan, materially improving
101 conditions for the genocidally victimized population in Darfur; and
- 102 (B) A National Interest Waiver issued by the President of the United States excluding
103 a company from the federal contract prohibitions provisions of the Sudan
104 Accountability and Divestment Act (Public Law 110-174).
- 105 (c)(1) A state agency shall require a company that submits a bid or proposal with respect
106 to a contract for goods or services, that currently or within the previous three years has
107 had business activities or other operations outside of the United States, to certify that the
108 company is not a scrutinized company.
- 109 (2) A state agency shall not require a company that submits a bid or proposal with
110 respect to a contract for goods or services, and that currently or within the previous three
111 years has had business activities or other operations outside of the United States, to
112 certify that the company is not a scrutinized company, if the company has obtained
113 permission to bid on or submit a proposal for a contract with a state agency for goods or
114 services pursuant to paragraph (2) of subsection (b) of this Code section.
- 115 (d)(1) ~~Not later than August 1, 2009, the~~ The Department of Administrative Services
116 shall file a written notice to the United States Attorney General detailing the requirements
117 contained in this Code section, as required by the federal Sudan Accountability and
118 Divestment Act of 2007 (P. L. No. 110-174).
- 119 (2) Annually thereafter, the Department of Administrative Services shall file a publicly
120 available report to the General Assembly and the United States Attorney General
121 outlining the actions taken under this Code section.
- 122 (3) The Department of Administrative Services shall report to the Attorney General of
123 Georgia the names of companies determined to have submitted false certifications under
124 subsection (c) of this Code section, together with information as to the false certification,
125 and the Attorney General shall determine whether to bring a civil action against the
126 companies. The companies shall pay all costs or fees incurred in a civil action, including
127 those for investigations that led to the discovery of a false certification.
- 128 (e) If the Department of Administrative Services determines that a company has submitted
129 a false certification under subsection (c) of this Code section:
- 130 (1) The company shall be liable for a civil penalty in an amount that is equal to the
131 greater of \$250,000.00 or twice the amount of the contract for which a bid or proposal
132 was submitted;
- 133 (2) The state agency or the Department of Administrative Services may terminate the
134 contract with the company; and

135 (3) The company shall be ineligible to, and shall not, bid on a state contract for a period
 136 of not less than three years from the date the state agency determines that the company
 137 submitted the false certification.

138 The Department of Administrative Services shall report to the Attorney General the name
 139 of the company that the Department of Administrative Services determined had submitted
 140 a false certification under subsection (c) of this Code section, together with its information
 141 as to the false certification, and the Attorney General shall determine whether to bring a
 142 civil action against such company. If such company is found to have submitted a false
 143 certification, such company shall be ordered to pay all costs and fees incurred by the state
 144 in the civil action, including all costs incurred by the state agency and the Department of
 145 Administrative Services for investigations that led to the finding of the false certification
 146 and all costs and fees incurred by the Attorney General.

147 (f) The General Assembly shall periodically review this Code section and determine if any
 148 of the following events have occurred which should be construed and deemed to be a basis
 149 for repealing this Code section:

150 (1) The Congress or President of the United States declares the Darfur genocide has been
 151 halted for at least 12 months;

152 (2) The United States revokes all sanctions imposed against the Government of Sudan
 153 or the Government of Iran;

154 (3) The President of the United States has certified to Congress that the Government of
 155 Sudan has honored its commitments to do all of the following:

156 (A) Abide by United Nations Security Council Resolution 1769 (2007);

157 (B) Cease attacks on civilians;

158 (C) Demobilize and demilitarize the Janjaweed and associated militias;

159 (D) Grant free and unfettered access for delivery of humanitarian assistance; and

160 (E) Allow for the safe and voluntary return of refugees and internally displaced
 161 persons;

162 (4) The Congress or President of the United States, through legislation or executive
 163 order, declares the contract prohibition of the type provided for in this Code section
 164 interferes with the conduct of United States foreign policy; or

165 (5) Such other circumstances as the General Assembly determines to warrant the
 166 discontinuance of the provisions of this Code section."

167 **SECTION 2.**

168 All laws and parts of laws in conflict with this Act are repealed.